

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MIGUEL RODRIGUEZ CORTEZ, et al.,
Plaintiffs,
v.
COUNTY OF MERCED, et al.,
Defendants.

No. 1:20-cv-00161-NONE-SAB

ORDER DISMISSING PLAINTIFF
CORTEZ'S CLAIMS IN THIS ACTION
WITH PREJUDICE

(Doc. No. 32)

Miguel Rodriguez Cortez and Desiree Mercado (“plaintiffs”) filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 30, 2020. A settlement conference was held in this action on August 21, 2020. (Doc. No. 26.) Plaintiff Cortez appeared for the settlement conference, but counsel informed the judge presiding over the conference that they were unsuccessful in reaching plaintiff Mercado and she did not appear. (*Id.*) The parties settled the claims of plaintiff Cortez, and counsel indicated that they would be filing a motion to withdraw from representation of plaintiff Mercado. (*Id.*) On September 9, 2020, plaintiffs’ counsel filed a motion to withdraw as counsel for Desiree Mercado based upon a conflict and their inability to communicate with her. (Doc. No. 30.) On September 10, 2020, a stipulation was filed to dismiss the claims of plaintiff Cortez with prejudice due to the settlement of his claims. (Doc. No. 32.)

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1 The stipulation before the court seeks dismissal of this action pursuant to Rule
2 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure. Under Rule 41(a)(1), a plaintiff may
3 voluntarily dismiss an action without a court order by filing (i) a notice of dismissal prior to the
4 opposing party filing an answer or motion for summary judgment or (ii) a stipulation that is
5 signed by all parties who have appeared in the action. In this instance, plaintiff Mercado did not
6 appear at the settlement conference due to counsel's inability to contact her and counsel has filed
7 a motion to withdraw from representation. Under these circumstances, the court declines to find
8 that plaintiff Mercado has stipulated to the dismissal of plaintiff Cortez's claims in this action.

9 Rule 41(a)(2) provides that an action may be dismissed at the plaintiff's request by court
10 order on terms that the court considers proper. The court shall construe the stipulation filed by
11 plaintiff Cortez and the defendants as a motion for dismissal of plaintiff Cortez's claims in this
12 action. The record does not reveal any basis for concern that granting this motion would
13 prejudice plaintiff Mercado in any way. Accordingly, the court shall grant the motion based
14 upon the settlement of plaintiff Cortez's claims.

15 Accordingly, plaintiff Cortez's claims in this action are DISMISSED WITH
16 PREJUDICE pursuant to Federal Rule of Civil Procedure 41(a)(2) with the parties to bear their
17 own attorney fees and costs.

18 IT IS SO ORDERED.

19 Dated: September 16, 2020



20 UNITED STATES DISTRICT JUDGE

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